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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/713,983

11/13/2003

Boaz Carmeli

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1536

35525

7590

01/02/2009

IBM CORP (YA)

C/O YEE & ASSOCIATES PC

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EXAMINER

DINH, KHANH Q

ART UNIT

PAPER NUMBER

2451

NOTIFICATION DATE

DELIVERY MODE

01/02/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptonotifs@yeeiplaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/713,983	<b>Applicant(s)</b> CARMELI ET AL.	
	<b>Examiner</b> Khanh Q. Dinh	<b>Art Unit</b> 2451	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13, 14 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13, 14 and 16-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/13/2003</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This is in response to the Election/Restriction reply filed on 11/17/2008. Applicant elects invention 1 (claims 13, 14, 16-19) without traverse. Therefore, claims 13, 14, 16-19 are presented for examination.

#### ***Claim Objections***

2. Claims 13 is objected to because of the following informalities:

The word "NACK" should be spelled out.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 13, 14, 16-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Earl, US pat. No.6,721,907.

As to claim 13, Earl discloses a method of sending packets to a multiplicity of subscribers in a multicast subscription system via a network, the method comprising:

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monitoring an activity at a NACK server for recent receipt of NACKs and responsive to not recently receiving NACKs at said NACK server, disturbing a flow of data between a packet sender and said multiplicity of subscribers over said network by creating a NACK generation incident (detecting if a data packet was dropped and reprocessing data packet for re-transmissions, see figs.3A-3F, col.14 line 12 to col.15 line 46).

As to claim 14, Earl discloses said monitoring includes determining whether or not there are attentive subscribers from said activity at said NACK server (see col.15 line 8 to col.16 line 14).

As to claim 16, Earl discloses said disturbing NACK generation incident comprises altering sent and pending queues (see col.15 line 8 to col.16 line 14).

As to claim 17, Earl discloses said disturbing NACK generation incident comprises placing a packet that was never transmitted in a sent queue (see col.10 line 27 to col.11 line 36).

As to claim 18, Earl discloses said disturbing NACK generation incident comprises altering a packet sequence number (see col.14 lines 1-48).

As to claim 19, Earl discloses said disturbing NACK generation incident comprises incrementing a packet sequence number relative to a sequence of packets that actually need to be sent (see col.13 line 21 to col.14 line 48 and col.15 lines 9-45).

**Other prior art cited**

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Zuk et al, US pub. No.2003/0154399.
- b. Harrell et al, US pub. No.2003/0067872.
- c. McEachern et al, US pat. No.7,234,000.

**Conclusion**

6. Claims 13, 14, 16-19 are rejected.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh Dinh whose telephone number is (571) 272-3936. The examiner can normally be reached on Monday through Friday from 8:00 A.m. to 5:00 P.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, FOLLANSBEE JOHN, can be reached on (571) 272-3964. The fax phone number for this group is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**Any response to this action should be mailed to:**

Commissioner for patents

P O Box 1450

Alexandria, VA 22313-1450

/Khanh Dinh/

Primary Examiner, Art Unit 2451